HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25237 OF 2007

Dated:28.11.2007

Between:

M/s. Venu Carriers,
Transport Operators,
Canal Road, Palakol having
Its Branch Office at Door
No.78-4-5, SBI Colony,
Syamala Nagar, Rajahmundry
Rep., by its Managing Partner
V. Narayana Murthy.

..Petitioner

And

1. State of Andhra Pradesh,
   represented by its Special
   Chief Secretary,
   Revenue Department,
   Secretariat Buildings,
   Hyderabad and another.

..Respondents.

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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner assailing the order dated 29.10.2007 passed by the Assistant Commissioner (CT) (LTU & INT), Kakinada Division, where under the petitioner was directed to pay an amount of Rs.14,16,265/- towards tax on the proposed turnovers for the year 2006-2007 under the APVAT Act, 2005.

Heard and perused the material available on record as well as the order impugned.

The main grievance of the petitioner is that the vehicles are being operated by the petitioner through the drivers appointed by it and all other statutory payments in respect of the vehicles are being paid by the petitioner towards plying of the vehicles for a certain period on payment for a guaranteed period and distance and that since there is no transfer of effective and exclusive control, custody or possession of the vehicles in favour of the Corporation, the transaction is out side the purview of section 4(8) of the Act.

The further grievance of the petitioner is that even though the petitioner has entered into an agreement with the ONGC, the Control, custody or possession of the vehicles is not with the ONGC and the vehicles are not transferred in favour of ONGC. The vehicles are in

physical possession of the petitioner and therefore, the right to use the same, vests with the petitioner and hence, the petitioner is not liable to pay the demanded tax.

Apart from that, the respondents have not afforded any opportunity to the petitioner before issuing the impugned demand notice. The respondents have failed to consider and follow the principles laid down by this Court and in fact, no show cause notice has been issued enabling the petitioner to file its objections. Therefore, it is sought by the petitioner to set aside the notice impugned.

The question as to whether the alleged hire charges on the vehicles in question, are liable to tax under section 4 (8) of the APVAT Act and whether the issue in question is covered by the notification in G.O.Ms.No:104, Revenue (CT-II) Department, dated 9.2.1990 which has exempted the owners of the buses from the tax payable under section 5 E APGST Act and whether the vehicles are in physical possession of the petitioner and whether the right to use the same vests with the petitioner or ONGC, is a matter to be adjudicated by the appropriate authority, but not at this stage of these proceedings by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

In the peculiar circumstances of the case and in view of the fact that no opportunity has been afforded to the petitioner to file the objections, without expressing any opinion on the merits of the case, we feel it a fit case wherein liberty can be given to the petitioner to file necessary objections in connection with the order impugned.

Accordingly, the petitioner is at liberty to file the objections, if any within a period of one (1) Week, subject to the condition of the petitioner depositing 12.5% of the demanded tax within such time. On such filing, the authorities shall consider the same in the light of the documentary evidence adduced if any and pass appropriate orders in accordance with law.

However, it is made clear that in case, the petitioner fails to deposit the amount and file objections, as directed, the authorities are at liberty to proceed with the order impugned.

The writ petition is accordingly disposed of. No costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 28th November, 2007
Note:
Issue C.C. tomorrow
(BO)
Nn.

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(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

28/11/2007